31. 5.11.2019 Heard Shri H.M. Dhal, learned counsel appearing on behalf of the petitioner and Shri S.K. Nayak, learned Senior Advocate appearing on behalf of the Orissa State Housing Board-opposite parties.

This Writ Petition involves the following prayer:

> "Under these circumstances the petitioner most humbly prays that this Hon'ble Court may be graciously pleased to issue a Rule Nisi calling upon the opposite parties to show cause as to why:
>
> (i) the order under Annexure-5 (series) shall not be quashed;
>
> (ii) the opposite parties shall not be directed to allot the house No.M.I.G.-2 in favour of the petitioner.
>
> (iii) the opposite parties shall not be permanently restrained from evicting the petitioner from the M.I.G. House No.2.
>
> (iv) any other relief(s) to which the petitioner is entitled shall not be granted,
>
> If the opposite parties fail to show cause or show insufficient cause, the Rule Nisi be made absolute,
>
> And for this act of your kindness the petitioner, shall as in duty bound ever pray."

Short background involved in this case is that a Housing Project was undertaken by the Housing Board at Sunabeda in the District of Koraput to provide housing accommodation to the persons interested in the locality. In the housing project various types of houses were constructed namely MIG & LIG houses. For the difficulty in the location of the project, people in the locality did not show interest, for which the Housing Board came up with an advertisement in the year 1997 indicating therein its desire to sell the houses involving the project at reduced price. So far as the MIG houses were concerned, it was

stated in the advertisement that on initial deposit of Rs.13,855/- the possession of the houses would be delivered. Petitioner alleges that on 6.02.1997 he purchased necessary application and submitted the same for allotment of a MIG house. On 7.04.1998 the petitioner also deposited a sum of Rs.5,000/- by way of demand draft towards the initial deposit and it is alleged that on acceptance of the form being filled up by the petitioner accompanying a draft of Rs.5,000/- there was an endorsement in the body of the application submitted by the petitioner marking that the petitioner has been allotted with MIG House No.2. Further facts surfaces from the pleadings as well as the submissions of the learned counsel for the petitioner that the brother of the petitioner was also an applicant in respect of another MIG House involving same scheme and his brother was also allotted with MIG House no.1. On getting a notice of eviction from the Housing Board the petitioner made representation before the authority indicating therein that there is valid allotment of the house under the scheme on due acceptance of the form alongwith a sum of Rs.5,000/- and for the endorsement in the body of the application form, the petitioner has right to occupy the house. The request of the petitioner is rejected. Basing on the further development that his brother was also allotted with house taking into account the similar deposit made by his brother and further in similar situation where other people have also been allotted with similar house on initial deposit, the petitioner made representation to the competent authority vide Annexure-7 and in the meantime finding coercive

measures being taken by the Housing Board, the petitioner rushed this Court by way of this Writ Petition.

Taking this Court to the document accompanied with the Writ Petition including the order vide Annexure-8, Shri Dhal, learned counsel for the petitioner attempted to establish that not only there is allotment of House bearing No.MIG-2 in favour of the petitioner but there also exists a draft establishing deposit of a sum of Rs.5,000/- with the Board by the petitioner. Further there is clear material establishing allotment of house no.MIG-1 in favour of the brother of the petitioner. Further taking this Court to the document vide Annexure-8 Shri Dhal, learned counsel for the petitioner also attempted to establish that in similar situation other persons have been allotted with the houses by the Housing Board. Shri Dhal, learned counsel for the petitioner alleged that the auction process involving the petitioner for allotment of house by the Board becomes illegal and thus makes a request to this Court to consider the allegation of the petitioner and thereby allowing the writ petition issuing appropriate mandamus to the opposite parties.

Shri S.K. Nayak, learned Senior Advocate appearing on behalf of the Orissa State Housing Board, on the other hand, taking this Court to the specific response of the Board though the counter affidavit as well as further affidavit contended that the Board has flatly denied to have accepted any application form with deposit at the instance of the petitioner. Board has strongly disputed regarding existence of document involving allotment of the house in favour of the petitioner. Further taking this Court to the

development through the further affidavit Shri Nayak, learned Senior Advocate contended that the Board has responded to this Court flatly denying existence of any document at the instance of the petitioner establishing deposit of amount or form even. It is, in this view of the matter, Shri Nayak, learned Senior Advocate objected the prayer made in this writ petition on the premises of involvement of serious disputed question of fact.

Considering the rival contentions of the parties, this Court finds, to the allegation of the petitioner that he has not only submitted necessary form being filled up by him but the form also accompanied a draft of Rs.5,000/-, the opposite parties have flatly denied to have received any such form or deposit. From the further affidavit, it also appears that on a query of the Board involving the Bank, the Asst. Land-cum-Admn. Officer, Orissa State Housing Board, Koraput of the Board by the communication dated 14.5.2001 intimated the Law Officer, Orissa State Housing Board, Bhubaneswar that the Board has not maintained any record of application received register for any of the scheme since beginning of the Office and secondly the Branch Manager, Allahabad Bank also refused to issue duplicate copy of Bank draft of Rs.5,000/- bearing No.B/R 249439/497. Further looking to the admission of the petitioner, this Court finds, a party was entitled to delivery of possession only after depositing of a sum of Rs.13,855/- by way of initial deposit but since the petitioner had deposited only a sum of Rs.5,000/-, there was no scope for delivery of possession of the house to the petitioner. So far as petitioner's claim that another person namely Tanmay

Kuldeep was also allotted with MIG House No.10 on deposit of Rs.5,000/- towards the initial cost and some persons in similar footing have also been allotted with houses, are concerned, this Court looking to the document vide Annexure-8 finds, Tanmay Kuldeep was delivered with possession of MIG House No.10 on deposit of Rs.5,000/- and only after acceptance of a sum of Rs.5,000/- with a demand for deposit of rest amount. This Court however is not inclined to entertain the case of the petitioner. For the flat denial of the Board to have received any amount deposited by the petitioner and for the petitioner's failing to establish regarding purchase of a draft of Rs.5,000/-, this Court finds, the Writ Petition involves highly disputed question of fact, for which this writ petition is not maintainable.

It is, at this stage of the matter, Shri Dhal, learned counsel for the petitioner taking this Court to the interim protection granted by this Court on 29.06.1999 in Misc. Case No.7021 of 1999 makes a request for permitting the petitioner to have an approach to the Board for settling the house in his favour on deposit of dues as appropriate.

Considering such request of Shri Dhal, learned counsel for the petitioner this Court directs, if the petitioner is so advised, may approach the Board by filing appropriate application along with deposit of a sum of Rs.2,00,000/- (Rupees Two Lakhs) within four weeks hence. In such event, the Board is directed to consider the application of the petitioner taking into consideration that the petitioner is occupying the House in question for over two decades, may be for the reason of interim protection

granted by this Court and also by fixing appropriate price. The entire exercise shall be concluded within a period of two months thereafter. For three months there shall be no coercive action taken against the petitioner provided he makes request alongwith such deposit in time.

The Writ Petition stands disposed of with the above direction.

Issue urgent certified copy as per rules.

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(Biswanath Rath, J.)

Ayas